



The Comptroller General
of the United States

Washington, D.C. 20548

Support

Decision

Matter of: MAPA Pioneer Corporation
File: B-231517
Date: September 13, 1988

DIGEST

Acknowledgment of amendment sent by commercial carrier cannot be considered when received after time set for bid opening, where the paramount cause of the late receipt was protester's failure to send amendment to bid depository and to indicate on delivery envelope that it contained a bid.

DECISION

MAPA Pioneer Corporation (Pioneer) protests the rejection of its bid as late under invitation for bids (IFB) No. DLA100-88-B-0351, issued by the Defense Logistics Agency (DLA), Defense Personnel Support Center (DPSC), for 51,024 pairs of rubber gloves. Pioneer's bid was rejected as late because the firm's acknowledgment of a material IFB amendment was received the day after bid opening. Pioneer contends that the late receipt was caused by DLA's failure to deliver the amendment in a timely fashion after it was received at the government installation. We deny the protest.

The IFB, issued on March 25, 1988, provided that hand-carried offers, including those sent by commercial carrier, should be delivered to the DPSC, Offer Depository Bldg. 12, 2nd Floor Receptionist Area, 2800 South 20th Street, Philadelphia, and that such bids must be plainly marked on the outside of the commercial carrier's envelope with the solicitation number, date, and time set for bid opening. On April 21, amendment 0001 was issued, calling for first article approval and extending bid opening to May 3, at 2 P.M. Block 11 of the amendment indicated that failure of the acknowledgment to be received at the place designated for the receipt of bids may result in rejection of the bid, and block 13 required the contractor to return one copy of the acknowledgment to the issuing office.

At the bid opening, three bids were received, including Pioneer's low bid. The agency received the acknowledged

043243

amendments of all the bidders except Pioneer, whose bid, as a result, was determined nonresponsive. Pioneer had sent the amendment on Thursday, April 28, by commercial carrier, addressed to the issuing activity (Arnetta L. Hobbs, DPSC, 2800 S. 20th St., Philadelphia), not to the place designated for receipt of bids. The amendment was hand-carried to DPSC's central mail receiving facility on Friday, April 29, but the DPSC mail carrier delivered the envelope to an office in which he incorrectly believed Ms. Hobbs worked. Since DPSC mail is not delivered on weekends, it was not until Monday, May 2, that the amendment again was placed in the mail system. The amendment then was not actually delivered to Ms. Hobbs until May 4, the day after bid opening.

Pioneer principally contends that the late receipt of the amendment was due to the agency's initial misdelivery of the envelope and to the DPSC mail system's ultimate failure to timely deliver the amendment even though it was received in the facility 4 days prior to the bid opening.

Bidders are responsible for the timely delivery of their bids and material amendments, and the late delivery of them generally requires the bids' rejection. See Key Airlines, B-214122, Feb. 27, 1984, 84-1 CPD ¶ 242. A late bid or acknowledgment of a material amendment sent by commercial carrier can only be considered if the paramount cause of the late receipt was some improper government action. G.M. Coen & Assos., Inc., B-225554, Feb. 12, 1987, 87-1 CPD ¶ 156.

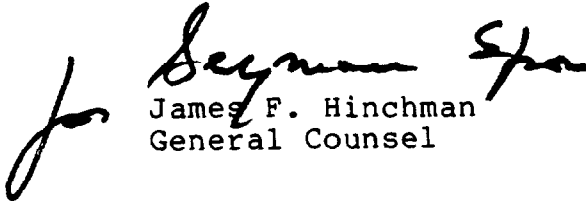
The record here does not show that government impropriety was the paramount cause for the lateness of Pioneer's acknowledgment. While more rapid, more accurate mail delivery at DPSC may have led to timely delivery of the acknowledgment, it is clear that Pioneer's own actions were the most immediate cause of the delayed delivery. First, contrary to express instructions in the IFB, Pioneer did not identify its acknowledgment, solicitation number, or bid opening date on the envelope; although the carrier's envelope was marked "extremely urgent," there simply was no way to identify the contents as bid documents that had to be received in a certain place at a certain time. See S&W Enterprises, Inc., B-219716, Aug. 19, 1985, 85-2 CPD ¶ 192.

Further, instead of sending the acknowledgment to the bid depository, with a copy to the issuing office, as the amendment instructed, Pioneer only sent the acknowledgment to the address of the issuing office specified in the amendment (Pioneer did not include the building or floor number of the bid depository). While Pioneer considered

these mailing instructions to be conflicting and misleading (and so argues in its protest), we see nothing confusing in a requirement that an amendment acknowledgment be sent to the same location as the original bid, with a copy to some other specified location.

We conclude that misaddressing and failing to mark the delivery envelope--not the failure of DPSC's mail system to deliver the envelope in 2 1/2 days--was the paramount cause for late receipt of Pioneer's acknowledgment. Accordingly, Pioneer's bid was properly rejected as late.

The protest is denied.

James F. Hinchman
General Counsel